

Testimony of
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At a hearing entitled:
“UN Human Rights Council: Reform or Regression”

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Mr. Chairman, it is a pleasure to be with you again today to discuss the UN Human Rights Council. Thank you for holding this hearing to consider recent developments in the UN Human Rights Council, as we move toward the next session. We deeply appreciate the Committee’s interest and concern, and commend you for your focus on human rights.

President Bush has proclaimed that, “at this critical time in the history of freedom, no nation can evade the demands of human dignity. In countries like Iran, North Korea, Belarus, Burma, Syria, Zimbabwe, and Cuba, governments must become accountable to their citizens and embrace democracy.” It is essential that the new UN Human Rights Council do everything it can to achieve these goals, as it is one of the primary institutions mandated to protect human rights worldwide. The United States is committed to improving this United Nations body, although unfortunately the new Council’s sessions so far have been disappointing. Much work remains to be done if the new Council is to become an improvement over its discredited predecessor, and we will work to make this United Nations body live up to its noble calling.

I appreciate the opportunity to present the Administration’s views on this new body and look forward to hearing the views from the highly regarded witnesses in the second panel. They are valued colleagues and deeply committed to promoting freedom and democracy and UN reform.

My bureau, the Bureau of International Organization Affairs, is responsible for policy related to the institutional working of multilateral organizations, and in that role, we work to make the UN human rights machinery as effective and strong as possible. My good friend and colleague, Erica Barks-Ruggles, is a Deputy Assistant Secretary of State in the Bureau of Democracy, Human Rights and Labor and works to promote human rights within multilateral organizations, particularly in country-specific cases.

History of UN Human Rights Machinery

The United Nations was founded in the aftermath of the Second World War, to help prevent conflicts and assist nations in meeting the needs and aspirations of their people and to protect their human dignity. The United Nations Charter specifically called for the creation of a Commission for the promotion of human rights, thereby establishing this function as one of the United Nations' founding priorities. Indeed, with the leadership of Eleanor Roosevelt, the Commission on Human Rights was one of the first two functional commissions set up at the UN. In its early days, the Commission successfully negotiated the Universal Declaration of Human Rights, which for the first time defined international standards and understanding of human rights. This history demonstrates the importance the UN placed on the promotion of human rights in its early years.

Need for Reform of the Machinery

In the intervening years, however, that clarity of purpose was lost as countries responsible for serious human rights abuses sought and obtained membership on the Commission in order to prevent criticism of their own records. By 2001 through 2004, the UN's record on promoting human rights reached its absolute nadir. While trouble in Darfur escalated, Sudan was elected and re-elected to the Commission on Human Rights. Unable to block Sudan's re-election, the U.S. delegate walked out of room in protest. During this period, Libya was chosen as the Commission's Chair, notwithstanding a U.S. call for a vote on what is normally a consensus decision. Further, a number of other countries -- including Zimbabwe -- joined Cuba and other abusers as members of the Commission to prevent criticism of their own records. Also in 2001, the United States was defeated in its bid for re-election to the Commission, for the only time in its history. The organization Reporters Without Borders described the situation best;

saying the members of the Commission had become both “judges and defendants.” You and I, Mr. Chairman, were in Geneva at the same time last year. We were working together to advance human rights at the last full session of the Commission, all the while saddened because its pathologies no longer surprised us.

In the face of these pathologies, Secretary General Annan called for the reform of the UN human rights machinery in his 2005 report on overall UN reform, “In Larger Freedom.” This report stated that the Commission created “a credibility deficit...which casts a shadow on the reputation of the United Nations system as a whole” and called on Member States to replace the discredited Commission. Thus began a long, complex process to create the new Council.

Membership Criteria for New Body

The resolution creating the Council was crafted over the course of several months in New York. The U.S. called for improving the body’s membership through two essential means: requiring election of members by two-thirds of UN Member States present and voting, and barring the membership of countries subject to UN Security Council sanctions, under Chapter VII of the UN Charter, for human rights abuses or acts of terrorism. We needed to make sure that the CHR’s successor was populated by firefighters, not arsonists. Unfortunately, the negotiated text did not include these criteria and we ultimately called for a vote and voted “no” on the resolution establishing the Council. The Secretary General had set the goal of creating a body definitively better than the Commission. A historic opportunity was squandered, with the acquiescence of some of our high-minded friends who were willing to settle for “good enough.” The Human Rights Council was created in a vote of 170 in favor, 4 opposed – the U.S., Israel, Palau, and the Marshall Islands – and three abstentions, by Belarus, Iran, and Venezuela.

The new 47-member Council is now a subsidiary organ of the General Assembly, rather than the Economic and Social Council, or ECOSOC. Its members are elected by all United Nations Member States, rather than just the 54 in ECOSOC. Hence, while a country could have been elected to the Commission with only 26 votes (and fewer if some ECOSOC members were not present and voting), by the terms of the resolution creating the Council, countries require a minimum of 96 votes for election to the HRC. In

addition, an important improvement to the elections procedures in the Human Rights Council as compared to the Commission is that all countries elected to the Council are voted on individually, not as part of a regional slate, as occurred previously.

Composition of Council

Another important difference between the former Commission and the new Council, one which has greatly influenced the actions of the Council thus far, is its composition. The regional distribution of seats in the Council is patterned after the General Assembly rather than the previous allocation which existed at the Commission. The Commission's membership contained a greater proportion of members from areas of the world that generally respect and promote fundamental freedoms and human rights: the Western European and Other Group – or WEOG – which includes the United States, and the Group of Latin America and the Caribbean – or GRULAC. However, when the General Assembly made the new Human Rights Council a subsidiary body, it decided to give the Council the same geographic distribution of seats as the General Assembly. This had the effect of raising the overall percentage of African, East European and Asian members, regions with mixed records on human rights, on the Council. At the same time, the percentage of countries from the Western Europe and Other Group and the Latin American and Caribbean Group declined.

This is significant because many African and Asian countries tend to favor economic, social, and cultural rights over civil and political rights. These regional groups have historically sought to eliminate country-specific resolutions, which the U.S. has always considered a crucial human rights tool. And the current composition of the Council has also given the Organization of Islamic Conference greater influence, allowing it to focus disproportionately on the Israeli-Palestinian conflict at the expense of other troubling situations around the globe. My colleague, Erica Barks-Ruggles, will further address the implications of this composition in practice.

At the same time, I must note some positive developments. As we saw in the May election, most regions presented more candidates than positions, providing a slate of options from which to choose. Some of the worst human rights abusers chose not to risk losing and did not run – for example, Sudan and Zimbabwe, – and some international troublemakers ran and lost – notably Iran and Venezuela. Additionally, a provision in the

resolution creating the Council allows for the suspension of the membership of a State that commits gross and systematic violations of human rights, with a two-thirds majority vote of the Council. If the UN membership shows the will to use it, this could be a potentially useful tool for the future (although the two-thirds threshold will be difficult to reach).

Frequency of Meetings

Procedurally, the Council will meet no less than 10 weeks per year in no fewer than three sessions. This is an improvement over the Commission's once a year meeting which invariably turned into political theater.

The Council also explicitly has the ability to convene special sessions when needed to address urgent situations, with the support of one-third of the Council members. This provision was designed to enable the body to respond quickly to developing human rights crises. I delivered a U.S. formal intervention during the negotiations in New York to create a Human Rights Council calling for multiple, prudent triggers for special sessions: a request of a majority of HRC members, or a call by the Secretary General or the High Commissioner for Human Rights. Unfortunately other nations didn't follow our advice and insisted on one trigger with an imprudent low bar: one-third of the membership of the Council.

Erica will discuss how this low bar, given the Council's composition, the political climate and recent world events, led to the two first special sessions focusing on Israel. These sessions were a particularly disheartening early indication of the Council's focus, and we will strive to reverse this trend. Although we lament the imbalanced focus on Israel during the early days of the Council, I want to emphasize that we will strive to protect the worthwhile mechanism of special sessions for appropriate situations in the future. We must preserve the Council's ability to draw the world's attention to the most morally troubling situations on a variety of continents.

We will also look for opportunities – such as the mandatory five-year review of the Council's status by the General Assembly – to review, and as needed revise, the Council's structure and work.

Council Mechanisms

Two important processes are in development at the Council at this time: the establishment of a new Universal Periodic Review (UPR) mechanism and the review of all mandates of the previous commission. In open-ended consultations taking place throughout the year, the U.S. is a full participant and our diplomatic mission is vigorously promoting the U.S. position.

We believe that the Universal Periodic Review must be a real “peer review” process. Governments should run the UPR. Although the review sessions would ideally be open to the public, welcoming individual experts and civil society organizations to provide input to the process and observe the proceedings, it should be undertaken by and for States. Second, we seek to ensure that nations are judged solely on the basis of treaties that they have ratified. Third, we would like to the review of all UN Member States to occur within five years and be of limited expense, and so suggest that this work be conducted intersessionally to prevent it from precluding other important work of the Council. Our most important criterion for the UPR is that it should not be allowed to crowd out time spent in the Council on important technical assistance to transitioning governments or frank condemnations of heinous abusers.

Meanwhile, as noted, in this first year the Council also is reviewing all special procedures from the Commission on Human Rights to improve upon and rationalize their work. Our objective is to maintain a system of special procedures, expert advice, and an individual complaint procedure. Our Mission in Geneva is fighting to preserve the Special Rapporteurs who examine country-specific situations and to reduce the number of thematic mandates that address economic, social, and cultural rights of questionable merit. These latter mandates were often designed to divert attention from basic freedoms. Mandates such as those in Belarus, Burma, Cuba, DPRK, and Sudan bring the deserved scrutiny of the international community to bear upon these regimes that have demonstrated little regard for the human rights of their citizens. This mandate review, therefore, is an opportunity for the Council to preserve what was good from the Commission, while breaking with its record of “business as usual” on other topics. The special procedure mandates should have a real impact and improve human rights around the world.

Office of the High Commissioner for Human Rights

An important tool to assist States is the Office of the High Commissioner for Human Rights. Because there is often a misunderstanding about this office, I would like to emphasize that the Human Rights Council – an elected body of UN member states – is separate and distinct from the OHCHR. However, the Council will rely – as did the Commission -- on the OHCHR to do the actual fieldwork needed to protect and promote human rights around the world.

We believe the Office of the High Commissioner has the potential to make even greater contributions to the protection of human rights around the world. Technical assistance by the OHCHR can provide much-needed assistance to governments that seek help. Therefore, we want to see enhancements of OHCHR's capacity for rapid deployment of human rights monitors to crisis spots, to boost significantly the number of non-emergency staff in the field, to increase technical assistance and training in countries around the world, and to dispatch fact-finding missions to trouble spots. It should focus increasing resources on strengthening its field offices, which offer tangible help, rather than building up a bureaucratized think tank in comfortable Geneva.

Conclusion

The Secretary General and High Commissioner for Human Rights said in the context of retiring the Commission and creating a Council that the era of norm-setting -- or inventing treaties and passing lofty rhetorical statements -- should be succeeded by an era of implementation of human rights. The United States welcomes this approach.

Mr. Chairman, we fully understand that you and Members of this Committee are concerned about the new Human Rights Council and believe it may not end up being a real improvement over the Commission on Human Rights. We share these concerns. Many of the Council's collective decisions have been troubling, even if the records of its individual members represent a slight improvement over those of the now defunct Commission.

Still, the requirement for more votes to win a seat on the Council, new precedents such as individual voting for Council members, competitive regional slates for elections, and public pledges by candidates, offer some

hope that the membership can be improved further in the future. And, as I described, new Council mechanisms such as the Universal Periodic Review are being established. They, too, may improve the Council's record on promoting and protecting human rights. The United States will work hard with our partners in the days and weeks ahead to convert these hopes into the reality of a truly improved UN Human Rights Council.

With that, I am delighted to turn the microphone over to my esteemed colleague, Erica Barks-Ruggles, to discuss how the Council has performed to date.